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IN THE

Supreme Court of the United States

MARY ANNA RIVET, *et al.*,

Petitioners,

v.

REGIONS BANK, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does a federal district court have the power and discretion under the All Writs Act and the relitigation exception to the Anti-Injunction Act to enjoin former mortgage holders from prosecuting a state court action to enforce a mortgage that a prior federal judgment expressly extinguished by means of a sale free and clear of liens and encumbrances pursuant to 11 U.S.C. § 363(f), after notice to the mortgage holders and a hearing at which the mortgage holders were represented?

LIST OF PARTIES AND RULE 29.6 STATEMENTS

1. Mary Anna Rivet

2. Minna Ree Winer

3. Edmund G. Miranne

4. Edmund G. Miranne, Jr.

5. Regions Bank, a wholly-owned subsidiary of Regions Financial Corporation

6. FSA, L.L.C., a limited liability company whose members are Northern Management and Financial, L.P., Roland von Kurnatowski, Bayou Plaza Development, L.L.C., Michael D. Aufrecht and Storage Trust Properties, L.P.

7. Walter L. Brown, Jr.

8. Perry S. Brown

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The respondents, Regions Bank, Walter L. Brown, Jr., Perry S. Brown and FSA, L.L.C., respectfully request that the Court deny the petition for a writ of certiorari seeking review of the Fifth Circuit's opinion in this case. That opinion is reported at 224 F.3d 483 (2000).

STATEMENT OF THE CASE

The court of appeals affirmed a district court's injunction, issued under the All Writs Act and the relitigation exception to the Anti-Injunction Act, that prevents the relitigation in state court of an issue that was litigated and conclusively determined in a bankruptcy court proceeding in 1986. The issue was a routine one in bankruptcy cases — whether a leasehold interest included in the bankruptcy estate, over which the bankruptcy court had exclusive jurisdiction pursuant to 28 U.S.C. § 1334(e), would be sold by a Chapter 7 trustee free and clear of liens and encumbrances pursuant to 11 U.S.C. § 363(f).[1] After notice to the petitioners and two hearings at which the petitioners were represented by counsel, the bankruptcy court entered orders authorizing and approving the sale.[2] Both orders decreed that the sale would be free and clear of liens and encumbrances, expressly including a second mortgage in favor of the petitioners. In reliance on the orders, the sale was consummated in 1986. In 1993, the purchaser of the leasehold interest acquired fee ownership of the leased property, causing the leasehold interest to be extinguished by operation of law. (Pet. App. at 4-5) The purchaser then sold the fee ownership interest to a third party.

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1. The debtor was a bankrupt partnership owned and controlled by the petitioners. (Pet. App. at 2)

2. The bankrupt partnership appealed both orders and the appeals were dismissed. (Pet. App. at 3)

Seven years after the bankruptcy sale, the petitioners filed a state court action to enforce the second mortgage that had been stripped from the leasehold interest by the bankruptcy court orders. The respondents initially removed the action to federal court and obtained its dismissal on *res judicata* grounds. The dismissal was affirmed by the Fifth Circuit, but reversed by this Court on the ground that removal jurisdiction was lacking. In so ruling, the Court noted "that under the relitigation exception to the Anti-Injunction Act, 28 U.S.C. § 2283, a federal court may enjoin state-court proceedings 'where necessary . . . to protect or effectuate its judgments.' " *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 478 n.3, 118 S. Ct. 921, 926, 926 L. Ed. 2d 912 (1998).

After the petitioners' action was remanded to state court, the respondents brought this action under the All Writs Act and the relitigation exception to the Anti-Injunction Act to enjoin the petitioners from prosecuting their state court action. The district court entered a judgment that enjoined the petitioners "from relitigating in state court against [the respondents] issues and claims that have been decided by [the bankruptcy court orders]." (Pet. App. at 26). Utilizing the standards provided in *Chick Kam Choo v. Exxon Corporation*, 486 U.S. 140, 108 S. Ct. 1684, 100 L. Ed. 2d 127 (1988), the court of appeals affirmed, concluding that the relitigation exception applied because the petitioners' "state court action necessarily requires relitigation of the precise question resolved by the bankruptcy action, i.e., the survival of the [petitioners'] mortgage as an encumbrance on the leasehold estate." (Pet. App. at 16)[3]

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3. The Fifth Circuit's opinion also reluctantly reversed a portion of the district court's judgment that had enjoined the petitioners from attempting to enforce default judgments entered in the state court proceeding. (Pet. App. at 17-25) The petition does not seek review of that aspect of the Fifth Circuit's decision. (Pet. at 8 n.5)

REASONS FOR DENYING THE WRIT

The Fifth Circuit's decision is based on a straightforward application of settled legal principles that have little or nothing to do with the issues that the petitioners seek to raise. The questions presented to the court of appeals were whether "the relitigation exception to the Anti-Injunction Act applies to this case" (Pet. App. at 8), and whether "the principles of equity, comity, and federalism supported [the] issuance of an injunction." (Pet. App. at 9) In answering the first question, the court applied the familiar four-point test for determining claim preclusion, with the additional requirement of *Chick Kam Choo* that "the claims or issues that the federal injunction is to insulate from litigation in state proceedings 'actually have been decided by the federal court.' " (Pet. App. at 9) The court rejected the petitioners' "argument that the questions they raise in their state-court action are different from those resolved by the bankruptcy court," concluding that the petitioners' "state court-action necessarily requires relitigation of the precise question resolved by the bankruptcy action, i.e., the survival of the [petitioners'] mortgage as an encumbrance on the leasehold estate." (Pet. App. at 13-16) With regard to the second question, the court rejected the petitioners' argument "that the district court's actions impermissibly encroach on state sovereignty," citing Congress' constitutional authority "to establish procedures for the transfer of [property] interests within the context of bankruptcies." (Pet. App. at 17 n.14)

The petitioners seek review of this unremarkable and uncontroversial ruling by attempting to manufacture issues that are unnecessary to the application of the relitigation exception to the Anti-Injunction Act. First, the petitioners argue that prior decisions of this Court require, as a matter

of federal law, that the bankruptcy court orders first be "domesticated" through enforcement in the Louisiana courts before they can be protected by an injunction under the relitigation exception to the Anti-Injunction Act. Second, the petitioners argue that the Fifth Circuit's ruling, by recognizing the preclusive effect of the bankruptcy court orders in the absence of their state court enforcement, conflicts with this Court's prior decisions concerning the doctrine of preemption. Third, the petitioners argue that the Fifth Circuit's decision violates principles of state sovereignty under this Court's prior rulings. These arguments have no merit and are unworthy of this Court's plenary consideration pursuant to Rule 10.

I.

THE ABSENCE OF STATE COURT ENFORCEMENT OF THE BANKRUPTCY COURT ORDERS IS IMMATERIAL TO THE INJUNCTION ISSUED IN THIS CASE.

The enforcement of the bankruptcy court orders simply is not an issue in this case. The injunction affirmed by the Fifth Circuit did not purport to enforce these orders; rather, it merely recognized that, for purposes of the relitigation exception, the orders have preclusive effect between the parties concerning issues and claims actually litigated in the bankruptcy proceeding. No decision of this Court or of the Fifth Circuit can be read to require that the orders first be domesticated through state court enforcement before being given this recognition under the relitigation exception. On the contrary, the decisions of this Court preclude the petitioners' collateral attack on final bankruptcy court orders concerning matters over which the bankruptcy court had exclusive jurisdiction.

A. The injunction does not enforce the bankruptcy court orders, but merely recognizes their preclusive effect.

The petition fails to recognize that there is an important distinction between enforcing a judgment, on the one hand, and recognizing its preclusive effect, on the other. Many judgments require enforcement in order to have practical effect. For example, a money judgment in favor of a plaintiff in a personal injury case may have no economic value unless it is enforced against the defendant through execution. However, even if that money judgment is never enforced through execution, it still will have preclusive effect between the litigants as to all issues and claims that were litigated.[4] The injunction in this case (Pet. App. at 26) merely recognized that the bankruptcy court orders, regardless whether they were or should have been "domesticated" in Louisiana, preclude the petitioners from relitigating against the respondents the issue of whether the petitioners' second mortgage would continue to encumber the leasehold interest after its sale by the trustee. Because this issue was actually litigated in the bankruptcy proceeding, the injunction was properly issued pursuant to the relitigation exception in accordance with the standards of *Chick Kam Choo*.

The petitioners' reliance on *Baker by Thomas v. General Motors Corporation*, 522 U.S. 222, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998), is misplaced. The issue in *Baker* was whether a Missouri federal court, in the course of adjudicating a state law tort suit, was constitutionally

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4. A judgment in favor of the defendant, of course, would never be enforced by a court. Nevertheless, it also would have preclusive effect as to all matters actually litigated and be entitled to protection under the relitigation exception. This was the situation in *Chick Kam Choo*.

required to give full faith and credit to a consent injunction issued by a Michigan state court in a separate lawsuit between different parties and involving different issues. If enforced by the Missouri court, the injunction would have precluded a witness from testifying in the Missouri case. Not surprisingly, this Court held that the Michigan injunction was not entitled to full faith and credit because "[m]ost essentially, Michigan lacks authority to control courts elsewhere by precluding them, in actions brought by strangers to the Michigan litigation, from determining for themselves what witnesses are competent to testify and what evidence is relevant and admissible in their search for the truth." 522 U.S. at 238, 118 S. Ct. at 666. In reaching this conclusion, however, the Court recognized that the Michigan injunction still was claim preclusive between the parties to the Michigan litigation and "could operate against [the enjoined party] to preclude him from *volunteering his testimony*." *Id.* at 239, 118 S. Ct. at 667 (emphasis in original).

Unlike *Baker*, this case does not involve a demand that a state court enforce the bankruptcy court orders under the Full Faith and Credit Clause. It simply involves an effort by the court that issued the orders to effectuate their preclusive effect by enjoining the petitioners from attempting to relitigate an issue decided by the orders. Neither *Baker*, nor any other decision of this Court, precludes this result.

B. The bankruptcy court orders do not require state court enforcement to be effective.

The petitioners' contention that "[a]ll judgments must be enforced" (Pet. at 10) simply is wrong. Pursuant to 28 U.S.C. § 1334(e), the bankruptcy court, as an adjunct to

the district court, had exclusive jurisdiction over all of the property of the bankruptcy estate, including the leasehold interest. Pursuant to 11 U.S.C. § 363(f), that court, and that court alone, had the power to decree that the sale of the leasehold interest would be free and clear of all liens and encumbrances. *See In re United States Brass Corp.*, 110 F.3d 1261, 1268 (7th Cir. 1997) ("Section 1334(d) [now § 1334(e)] gives the bankruptcy court control of all the property. Creditors who want to enforce their liens have to do so in that court regardless of the location of the creditor or the property.") Because the bankruptcy court had this exclusive jurisdiction, its orders were conclusive "as to all persons in the world" concerning which, if any, encumbrances would continue to affect the leasehold interest following its sale by the bankruptcy trustee. Restatement of the Law of Judgments, 2d, § 30, Comment A. (American Law Institute 1982). Once the sale occurred, the purchaser and its successors in interest were forever protected from claims by former lien holders, whose sole remedy was to look to the proceeds, if any, of the sale. 11 U.S.C. § 363(m); *Silverman v. Ankari (In re Oyster Bay Cove)*, 196 B.R. 251 (E.D.N.Y. 1996); *In re Lady H. Coal Co.*, 193 B.R. 233 (Bankr. S.D.W. Va. 1996).

Applying these principles, the court of appeals properly rejected the petitioners' argument that the bankruptcy court orders required further enforcement pursuant to state law in order to be effective. The court held that the bankruptcy court orders were self-executing, noting that, if the law were otherwise, "it would seemingly be impossible to have the liens attach to the sale proceeds," as specified by the orders themselves. (Pet. App. at 15). The petitioners offer no relevant legal authority, from this Court or any other, that conflicts with this ruling.

On the contrary, it is the petitioners' state court action, which collaterally attacks the bankruptcy court orders, that conflicts with the decisions of this Court. In *Celotex Corp. v. Edwards*, 514 U.S. 300, 313, 115 S. Ct. 1493, 1501, 131 L. Ed. 2d 403 (1995), this Court criticized collateral attacks on bankruptcy orders for "seriously undercutting the orderly process of the law." This is particularly true with respect to an order that authorizes the sale of property pursuant to Section 363. "Unless bankruptcy sales are final when made, rather than being subject to being ripped open years later, high prices will not be offered for the assets of bankrupt firms." *Matter of Met-L-Wood Corp.*, 861 F.2d 1012, 1019 (7th Cir. 1988), *cert. denied*, 490 U.S. 1006, 109 S. Ct. 1642, 104 L. Ed. 2d 157 (1989). *See In re Edwards*, 962 F.2d 641, 643 (7th Cir. 1992) ("If purchasers at judicially approved sales of property of a bankrupt estate, and their lenders, cannot rely on the deed that they receive at the sale, it will be difficult to liquidate bankrupt estates at positive prices."). Any requirement that a Section 363(f) sale order be "domesticated" through enforcement pursuant to state law procedures in order to have effect would severely undermine the federal courts' exclusive jurisdiction over bankruptcy cases and property of bankruptcy estates. It also would seriously diminish the ability of a debtor-in-possession or trustee to sell property of the estate on favorable terms.

A large bankruptcy case may involve property in all fifty states. In the petitioners' view, a bankruptcy court's order authorizing the transfer of free and clear title to property located in multiple states would be ineffective in any state in which it was not "domesticated" through enforcement pursuant to that state's procedures. The grant of power to Congress under Article I of the United States Constitution to "establish uniform laws on the subject of bankruptcies

throughout the United States" precludes this result. *International Shoe Co. v. Pinkus*, 278 U.S. 261, 265, 49 S. Ct. 108, 110, 73 L. Ed. 318 (1929). ("The power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States is unrestricted and paramount. . . . The national purpose to establish uniformity necessarily excludes state regulation. . . . States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations.")

II.

THE PREEMPTION ISSUE RAISED BY THE PETITION DOES NOT EXIST.

The petitioners' contention that the Fifth Circuit's ruling ignores this Court's decisions by failing to "engage in a careful and rigorous analysis under the doctrine of preemption" (Pet. at 16) misstates the limited scope and effect of the ruling. The court of appeals' ruling did not "sweep aside" state laws and mandate "that, in effect, they do not exist." (Pet. at 15-16) On the contrary, the Fifth Circuit properly avoided reaching a constitutional preemption issue through its reasoned conclusion that the state statutes at issue do not apply to the bankruptcy court orders.[5]

The Chapter 7 trustee's sale of the leasehold interest did not itself extinguish or otherwise affect the petitioners'

5. The decisions of this Court long have recognized that the federal courts have a duty to avoid decisions of constitutional questions, particularly when the question turns on uncertainty in the construction of state law. *See, e.g., Rescue Army v. Municipal Court of Los Angeles*, 331 U.S. 549, 67 S. Ct. 1409, 91 L. Ed. 1666 (1947).

second mortgage. Rather, it was the bankruptcy court orders, which approved and confirmed the sale, that decreed that the sale would be free and clear of all liens and encumbrances, expressly including the petitioners' second mortgage. This distinction is important because La. R.S. 9:5031 and La. R.S. 9:5251, by their plain language, purport to limit only the effect of bankruptcy *sales*, not of bankruptcy *orders*. The Fifth Circuit properly construed the plain language of the state statutes to avoid rather than seek a conflict with federal law.

The Fifth Circuit's reading of La. R.S. 9:5031 and La. R.S. 9:5251 recognizes that not all sales in bankruptcy are ordered to be made free and clear of liens and encumbrances. Thus, when a bankruptcy sale is made subject to existing liens and encumbrances, La. R.S. 9:5031 and La. R.S. 9:5251 serve to assure that the sale itself will not be deemed to affect them.

This reading of La. R.S. 9:5031 and La. R.S. 9:5251 also is consistent with other provisions of Louisiana law that give effect to foreign judgments without requiring their domestication through enforcement under state law. For example, La. R.S. 13:4204 permits a Louisiana federal court judgment to be recorded in the mortgage records, thereby creating a judicial mortgage against the property of the judgment debtor, without any necessity that the judgment first be "domesticated" through state court enforcement. Similarly, Louisiana Civil Code Article 3337, without any mention of a requirement for state court "domestication" of a foreign judgment, directs the recorder to cancel or erase a mortgage from his records when "[t]he cancellation or erasure is ordered by a judgment." The petitioners offer no compelling reason why La. R.S. 9:5031 and La. R.S. 9:5251,

contrary to their plain language, should be read to impose a requirement of domestication, particularly in the context of a bankruptcy court order affecting property over which the bankruptcy court had exclusive jurisdiction.

There is no preemption issue in this case because there is no necessary conflict between federal bankruptcy law and the state statutes upon which the petitioners rely. Accordingly, the decisions of this Court requiring "a careful and rigorous analysis under the doctrine of preemption" (Pet. at 16) are inapposite.

III.

THE FIFTH CIRCUIT'S RULING DOES NOT COMPROMISE STATE SOVEREIGNTY.

The petitioners' argument that the Fifth Circuit's ruling elevates the bankruptcy court orders into "super judgments" that will run rampant over Louisiana's property laws in contravention of this Court's decisions is completely unfounded. The legal premise on which this argument is based — that public record inscription creates substantive rights[6] — simply is false. The continued inscription of the petitioners' second mortgage on the public record has never been determinative under Louisiana law as to whether the mortgage ever had, or would continue to have, substantive effect.

It is black letter law in Louisiana that public recordation does not create any rights or obligations, but merely notifies

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6. The petitioners state, for example, that "[i]n Louisiana, as long as a mortgage is recorded and not erased, that mortgage is conclusively presumed to exist in the eyes of the State." (Pet. at 21)

third parties that such rights or obligations may exist. *Phillips v. Parker*, 483 So. 2d 972, 975 (La. 1986);[7] *Coldwell Banker J. Wesley Dowling & Assoc. v. City Bank & Trust*, 602 So. 2d 1051, 1053 (La. App. 2d Cir. 1992); *Gulf South Bank & Trust Co. v. Demarest*, 354 So. 2d 695, 697 (La. App. 4th Cir. 1978); William V. Redmann, The Louisiana Law or Recordation: Some Principles and Some Problems, 39 Tul. L. Rev. 491, 495 (1915). In particular, recordation "is neither proof nor promise of the validity of the recorded or written instrument, which alone can be the source of the rights asserted." *Gulf South Bank & Trust Co.* 354 So. 2d at 697. Thus, the recordation of a forged document does not make the document valid. *Id.* at 697-98. Nor does a recorded mortgage create a right to foreclose absent the existence of an underlying obligation. *First Guaranty Bank v. Alford*, 366 So. 2d 1299, 1302-03 (La. 1978).

Applying these principles to the same facts presented here, the Fifth Circuit panel that decided *Rivet v. Regions Bank of Louisiana*, 108 F.3d 576, 589 (5th Cir. 1997), *rev'd on other grounds*, 522 U.S. 470, 118 S. Ct. 921, 139 L. Ed. 2d 912 (1998), concluded that "the existence of the uncancelled inscription of the second mortgage on the public records could not keep the mortgage itself legally viable after the obligation it secured — the collateral mortgage note — as well as the mortgage, were terminated in the bankruptcy of the maker/mortgagor, THILP." The same principle holds true for the petitioners' arguments that the reaffirmation and reinscription of the second mortgage somehow resurrected the mortgage obligation. Reaffirmation does not create any

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7. The petitioners' citation of this case in support of their contrary argument demonstrates the unreliability of the petitioners' position. (Pet. at 21)

greater rights than existed in the instrument originally. Likewise, reinscription of an invalid instrument cannot create rights. *Gulf South Bank & Trust Co.*, 354 So. 2d at 697-98; *First Guaranty Bank*, 366 So. 2d at 1302-03.

Contrary to the petitioners' assertions,[8] the Fifth Circuit's decision properly recognizes and can only serve to reinforce these principles of Louisiana's public records doctrine. The decision recognizes that public record inscriptions are intended to put third parties on notice that rights may exist, but that they are not intended to be conclusive as to the existence of any rights. The facts of this case provide a good example. The public record reflects the following relevant inscriptions:

(1) the original lease;

(2) the two mortgages against the leasehold interest;

(3) the bankruptcy trustee's sale of leasehold interest, along with the bankruptcy court orders decreeing that the sale would be free and clear of all liens and encumbrances including the petitioners' second mortgage;

(4) the subsequent termination of the leasehold interest when its owner later purchased the fee interest in the leased property; and

(5) the reaffirmation and reinscription of the second mortgage.

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8. The petitioners assert, for example, that upholding the Fifth Circuit's ruling will mean that "no one may ever again peruse Louisiana's mortgage records with any confidence that they are accurate." (Pet. at 22)

A third party perusing these inscriptions would have adequate notice to inquire further before relying on the substantive effect of any of the recorded instruments.[9]

The Fifth Circuit's decision cannot raise Eleventh Amendment concerns because neither the State of Louisiana State nor any of its officials have been sued or are affected in any way by the district court's injunction.[10] It does not compel the state to do, or not to do, anything. The sole effect of the injunction affirmed by the Fifth Circuit is to restrain the petitioners from attempting to relitigate in their state court action an issue that already was litigated and decided in the bankruptcy court proceeding. The injunction serves only to effectuate the preclusive effect of the bankruptcy court orders against the petitioners.

CONCLUSION

The petition fails to provide a compelling reason for the invocation of the Court's discretion pursuant to Rule 10. The Fifth Circuit's ruling does not conflict with any decision of this Court or of any court of appeal concerning an issue of importance. Accordingly, the Court should deny the petition for a writ of certiorari.

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9. The petitioners, of course, are not third parties and have always had actual knowledge of these transactions.

10. The Eleventh Amendment, of course, would not prohibit a suit in federal court to compel a state recorder of mortgages to comply with federal law. *See Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908).

Respectfully submitted,

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